

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, *et al.*,)
)
Plaintiffs,)
)
v.)
)
TYSON FOODS, INC., *et al.*,)
)
Defendants.)
_____)

Case No. 4:05-cv-00329-GKF-PJC

NOTICE OF SUBPOENA

PLEASE TAKE NOTICE that pursuant to Rule 45 of the Federal Rules of Civil Procedure, Defendants Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc. ("Tyson Defendants"), shall serve the attached subpoena *duces tecum* upon Consumer Logic, Inc., 4928 South 79th East Ave., Fontana Center, Tulsa, Oklahoma 74145.

DATED: January 30, 2009

BY: /s/ Jay T. Jorgensen
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Jay T. Jorgensen
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-and-

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-and-

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**ATTORNEYS FOR TYSON FOODS, INC.;
TYSON POULTRY, INC.; TYSON
CHICKEN, INC; AND COBB-VANTRESS,
INC.**

AO88 (Rev. 12/05) Subpoena in a Civil Case

Issued by the
UNITED STATES DISTRICT COURT

NORTHERN

DISTRICT OF

OKLAHOMA

State of Oklahoma, et al.

SUBPOENA IN A CIVIL CASE

V.

Tyson Foods, Inc., et al.

Case Number:¹ 4:05-cv-00329-GKF-PJC

TO: Consumer Logic, Inc.
4928 S 79th E Ave
Tulsa, OK 74145

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):
See Exhibit A, attached.

PLACE McDaniel, Hixon, Longwell, & Acord PLLC, c/o Phillip Hixon,
320 S. Boston Avenue, Suite 700, Tulsa, OK 74103

DATE AND TIME
2/6/2009 4:39 pm

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Gordon D. Todd, Sidley Austin LLP, 1501 K St., N.W.
Washington, D.C. 20005 - Counsel for Defendant Tyson Foods, Inc.

1/29/2209

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

PROOF OF SERVICE

| | |
|------------------------|-------------------|
| DATE | PLACE |
| SERVED | |
| SERVED ON (PRINT NAME) | MANNER OF SERVICE |
| SERVED BY (PRINT NAME) | TITLE |

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises - or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

EXHIBIT A

Defendants Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc. ("Tyson Defendants"), hereby request that Consumer Logic Inc. produce the documents specified below in accordance with Federal Rule of Civil Procedure Rule 45(a), and the Definitions and Instructions set forth, for inspection and copying at the offices of McDaniel, Hixon, Longwell & Acord, PLLC, 320 South Boston Avenue, Suite 700, Tulsa, Oklahoma 74103, by a date no later than February 6, 2009.

DEFINITIONS

For purposes of this Subpoena, the following definitions shall apply:

1. The term "Plaintiffs" means the State of Oklahoma, by and through W.A. Drew Edmondson and J.D. Strong, Oklahoma Secretary of the Environment, or their predecessors in office, and any of their present or former agents, attorneys, representatives, consultants, officers, directors, partners, managers, members or employees, including but not limited to Stratus Consulting, Westat Inc. and the authors of the reports for State of Oklahoma, in Case No. 05-CV-0329-GKF-SAJ, *State of Oklahoma v. Tyson Foods, et al.* (In the United States District Court for the Northern District of Oklahoma) entitled "Natural Resource Damages Associated with Aesthetic and Ecosystem Injuries to Oklahoma's Illinois River System and Tenkiller Lake" and "Natural Resource Damages Associated with Past Aesthetic and Ecosystem Injuries to Oklahoma's Illinois River System and Tenkiller Lake".

2. The term "Plaintiffs' Damages Reports" means the reports for State of Oklahoma, in Case No. 05-CV-0329-GKF-SAJ, *State of Oklahoma v. Tyson Foods, et al.* (In the United States District Court for the Northern District of Oklahoma), including but not limited to those entitled "Natural Resource Damages Associated with Aesthetic and Ecosystem Injuries to

Oklahoma's Illinois River System and Tenkiller Lake" and "Natural Resource Damages Associated with Past Aesthetic and Ecosystem Injuries to Oklahoma's Illinois River System and Tenkiller Lake".

3. The terms "you," "your," and "Consumer Logic" means Consumer Logic, Inc. and its subsidiaries or affiliates, and any of their present or former officers, directors, partners, managers, members, employees, agents, representatives, predecessors, successors, corporate parents, subsidiaries or affiliates.

4. The term "representative" means any present or former officer, director, partner, manager, employee, agent, representative, attorney, consultant or other person acting for or on behalf of any other person.

5. The term "document" means writings, drawings, graphs, charts, e-mails, spreadsheets, presentations, recordings, photographs, phonorecords and any other written or data compilations, including electronic or computerized data compilations from which information can be obtained, translated if necessary, by the respondent through detection devices into reasonably usable form, as set forth in Federal Rule of Civil Procedure 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

6. The term "including" shall mean including without limitation. "Including" should not be read to restrict or limit the scope of a particular document request in any way. Rather, it provides an example of a responsive document or category of responsive documents.

7. The terms "relate to" and "relating to" mean directly or indirectly mentioning, concerning, referring, regarding, affecting, defining, dealing with, constituting, identifying, discussing, describing, supporting or refuting, pertaining to or being connected with, a stated subject matter.

INSTRUCTIONS

1. These requests for documents seek production of all documents described therein and all attachments thereto, and any file or other folders in which such documents are stored or filed in the ordinary course of business, that are in your possession, custody or control.

2. You shall produce all documents requested below that are within your possession, custody or control, including documents within the possession, custody or control of your present or former representatives, consultants, agents, officers, directors, employees, investigators or anyone else acting on your behalf.

3. You do not need to produce duplicate documents from the same file. However, to the extent that different files (e.g., the working files of different employees, or storage files of different office locations) have duplicate versions of the same document, you should produce duplicate versions so as to demonstrate the presence of the document in each of those files.

4. If files are maintained in a manner that indicates the person who created and/or has administrative control over the particular files, indicate the person who is the custodian of the file and, if known, the originator of that file.

5. You shall either (i) organize and segregate the documents you produce according to the specific numbered requests listed below to which the documents are primarily responsive, or (ii) produce the documents in the order they are kept in the normal course of business in your files; but in either case, you shall identify the source of each document and the manner in which they are being produced.

6. If no documents are produced in response to a particular request, please so indicate in the response.

7. If the requests cannot be responded to in full, respond to the extent possible, specify the reason for your inability to respond to the remainder, and produce all documents regarding the responded-to portion.

8. In construing these requests, (i) masculine, feminine or neutral pronouns shall not exclude other genders; (ii) the present tense includes the past and future tenses, and the past tense includes the present and future tenses; (iii) “any” shall be read to include “all” and vice versa; (iv) the disjunctive shall also be read to include the conjunctive and vice versa; and (v) the singular shall be read to include the plural and vice versa, so as to bring within the scope of these requests any documents that might otherwise be construed to be outside their scope.

9. If you are withholding a document under claim of privilege (including the work product doctrine), please provide the information set forth in Federal Rules of Civil Procedure Rule 26(b)(5), including the type of document, a detailed description of the subject matter of the document, the date of the document and such other information as is sufficient to identify the document, including where appropriate, the author, addressee, custodian and any other recipient of the document, including the identity of any individuals to whom the document was subsequently sent, and where not apparent, the relationship of the author, addressee, custodian and any other recipient to each other, in a manner that, without revealing the information claimed to be protected, will enable the Tyson Defendants to assess the applicability of the privilege or protection claimed by you.

10. When a document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without thereby disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a document, the party claiming the privilege must clearly indicate the portions as to which the

privilege is claimed. When a document has been redacted or altered in any fashion, identify as to each document the reason for the redaction or alteration, and the date of the redaction or alteration. Any redaction must be clearly visible on the redacted document.

11. For each document responsive to these requests that is withheld on grounds other than privilege, state in detail the basis for the failure to produce the document.

12. If you cannot produce a document responsive to these requests because it no longer exists or it is no longer in your possession, custody or control, please identify that document by: (i) its title; (ii) its nature (for example, a "letter" or "e-mail"); (iii) the date it was created; (iv) its author(s) or signator(y/ies); (v) any of its recipient(s); (vi) the last place it was known to have been located; (vii) the circumstances under which it ceased to exist or passed from your possession, custody or control; and (viii) the identity and last known residence and business address of any person who had knowledge of its existence and location.

13. If any document has been destroyed and would have provided information responsive to these requests, please identify such document and state the circumstances of the destruction of each such document including: (i) the identity of the person who actually destroyed the document; (ii) the identity of any person who ordered or directed its destruction; (iii) the date and location of its destruction; and (iv) any policy or procedure which you contend relates to, allows, compels or explains such destruction.

DOCUMENT REQUESTS

REQUEST NO. 1:

All materials, documents and data related to any services provided by Consumer Logic to Plaintiffs in the matter of *State of Oklahoma v. Tyson Foods, et al.* (In the United States District Court for the Northern District of Oklahoma).

REQUEST NO. 2:

All materials, documents and data related to Consumer Logic's assistance in connection with the telephone survey(s), focus group(s), or any other testing and studies (including any prior versions thereof) referenced in Plaintiffs' Damages Reports, including but not limited to:

- the identity of each participant in the above-referenced testing and studies;
- the identity of Consumer Logic personnel assisting in the above-referenced testing and studies;
- the identity of non-Consumer Logic personnel assisting in the above-referenced testing and studies;
- any information provided, shown or told to any participant in the above-referenced testing and studies including any scripts, factual descriptions, introductions, calling lists or other similar materials;
- any information related to the development of the structure and content of the instrument(s) used in the above-referenced testing and studies.

REQUEST NO. 3:

All materials, documents and data collected, received or compiled by Consumer Logic in connection with the telephone survey(s), focus group(s), or any other testing and studies (including any prior versions thereof) referenced in Plaintiffs' Damages Reports, including but not limited to:

- any and all information and response(s) provided by participants in the above-referenced testing and studies;
- any and all information and response(s) provided by interviewers or supervisors in the above-referenced testing and studies;

- any other data collected, received or compiled by Consumer Logic in connection with the above-referenced testing and studies.

REQUEST NO. 4:

All materials, documents and data provided by Consumer Logic to Plaintiffs, or by Plaintiffs to Consumer Logic, in connection with Plaintiffs' Damages Reports.

REQUEST NO. 5:

All communications between Consumer Logic and Plaintiffs in connection with the services provided by Consumer Logic to Plaintiffs in the matter of *State of Oklahoma v. Tyson Foods, et al.* (In the United States District Court for the Northern District of Oklahoma), including but not limited to any communications related to the telephone survey(s), focus group(s), or any other testing and studies (including any prior versions thereof) referenced in Plaintiffs' Damages Reports.

REQUEST NO. 6:

All invoices, bills, communications, proof of payment, or other documents relating to compensation of any sort provided to Consumer Logic in connection with the matter of *State of Oklahoma v. Tyson Foods, et al.* (In the United States District Court for the Northern District of Oklahoma).

REQUEST NO. 7:

All documents relating to travel by any person conducting surveying or polling activity at Consumer Logic's or Plaintiffs' direction in connection with the matter of *State of Oklahoma v. Tyson Foods, et al.* (In the United States District Court for the Northern District of Oklahoma), including but not limited to air travel records, car rental records, maps, lists of locations actually

or planned to be visited, addresses of potential or actual interviewees, calling lists, time sheets, expense forms and GPS records.